

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT VIRTUAL MEETING ON AUGUST 26, 2021 @ 7pm

Case Number: B-21-12 (B265279)

Applicant: Colby Shultz

Appeal: Requesting approval by the Board of Appeals to grant a variance in accordance with Section 1-19-4.220. Nonconforming Structures, to expand nonconforming portions of a nonconforming structure if no increase of the building footprint is proposed and the expansion does not extend farther into the required setback. Section 1-19-4.22(C) states that the Board of Appeals may grant a variance to expand a nonconforming portion of an existing nonconforming structure only if the proposed expansion does not:(1) Increase the original footprint of the nonconforming portion of the structure; (2) Extend farther into the required setback(s) than the existing nonconforming portion(s) of the nonconforming structure; or (3) Include the construction of a nonconforming porch, enclosure of an existing nonconforming porch, or the addition of stories on top of a nonconforming porch.

Location: The property is identified as, 6012 Quinn Road, Frederick MD, 21701, Tax Map 78, Parcel 0204, Tax ID # 09257780, Low Density Residential (R1)

Planning Region: New Market

Zoning District: Low Density Residential (R1)

Comp. Plan Designation: Low Density Residential

Applicable Ordinances: Sec. 1-19-3.220 Variances
Sec. 1-19-6.100 Design Requirements

Background: Sec.1-19-4.220 (C) Nonconforming Structures

The Applicant's property is zoned Low Density Residential (R1) and is 1 acre in size. The required setbacks for this zoning district are front, 40 ft., side 10 ft. and rear 30 ft. The Applicant has a front setback requirement of 40 ft. plus an additional 25 ft. road right of way, totaling 65 ft. setback from the center line right of way. The home currently is located 60.5 ft. from the center line of the right of way. The home is nonconforming due to the front setback distance and requires a variance of 4.5 ft. (Attachment 1)

Proposal:

The Applicant is requesting approval by the Board of Appeals to grant a variance to expand nonconforming portions of a nonconforming structure if no increase of the building footprint is proposed and the expansion does not extend farther into the required setback in accordance

with Sec. 1-19-4.220. Nonconforming Structures, Section 1-19-3.220 Variances, and Section 1-19-6.100 Design Requirements of the Frederick County Zoning Ordinance.

General Criteria - Variance:

Under the provisions of Section 1-19-3.220(C) of the County Zoning Ordinance, the Board of Appeals shall not grant a variance unless and until a public hearing is held and all of the following criteria are met:

- (A) The Board of Appeals may authorize a variance in height, lot area and yard regulations.

The Applicant states that he understands this requirement.

- (B) An application for a variance shall be filed with the Board of Appeals only after refusal of zoning approval or an adverse determination has been issued by the Zoning Administrator.

The Applicant states that he was directed to zoning staff who confirmed that a variance would be needed in order to approve any building permits for this site.

- (C) The Board of Appeals shall not grant a variance unless and until a public hearing is held and all of the following criteria are met:

- (1) First, the Board of Appeals shall find that special conditions and circumstances exist which are unique to the land or structure involved and which are not applicable to other lands or structures in the same district.

The Applicant states that he understands this requirement.

- (2) Upon making this finding the Board of Appeals shall also find that the following criteria are met:

- (a) That the special conditions and circumstances do not result from the actions of the applicant; and

The Applicant states that this circumstance is not the result of any action taken by the Owner/Applicant. The existing structure was built in 1955 and the 2nd floor limits its use with current design and lack of bathrooms.

- (b) The literal interpretation of the provisions of Chapter 1-19 of the Frederick County Code would result in unreasonable hardship and deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of Chapter 1-19 of the Frederick County Code; and

The biggest issue with this is the plan to go from 2x8 floor trusses to a more modern 14" floor truss. If we were to only complete the new trusses where conforming, we would have a 7" stepdown at the front 2' of the house along with several other issues that this would create. (See Attachment 2).

- (c) That granting the variance will not confer on the applicant any special privilege that is denied by Chapter 1-19 of the Frederick County Code to other lands or structures in the same district; and

The Applicant states that the granting of this variance would not confer any special privilege, on the owner.

- (d) That the granting of the variance will be in harmony with the general purpose and intent of Chapter 1-19 of the Frederick County Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The Applicant states that the variance will be in harmony with the neighbors and will not be detrimental to the public welfare. This application does not interfere or impact the use of any other property.

- (D) In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with Chapter 1-19 of the Frederick County Code. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, is a violation of Chapter 1-19 of the Frederick County Code.

The Applicant states that he understands this requirement.

- (E) Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of Chapter 1-19 of the Frederick County Code in the zone involved, or any use expressly or by implication prohibited by the terms of Chapter 1-19 of the Frederick County Code in said zone.

The Applicant states that he understands this requirement.

- (F) Section 1-19-4.220.(C) of the Frederick County Zoning Ordinance applies to this case.

(C) The Board of Appeals may grant a variance to expand a nonconforming portion of an existing nonconforming structure only if the proposed expansion does not:

- (1) Increase the original footprint of the nonconforming portion of the structure;

The Applicant states that the proposed changes:

(a) Will not increase the original footprint of the nonconforming portion of the structure.

(b) The SF area added on the 2nd floor (see Attachment 2) will not extend beyond the nonconforming portion of the 1st floor. The nonconforming area of the house, not including the existing porch, equals 102.2 SF.

(c) Please see the attachment 2. It shows the existing highlighted area in question, and shows a distance of 2.8' on the left or western side of the house and 4.5' on the eastern side of the house x 28' wide. The average of 2.8 and 4.5 feet = 3.65', which when multiplied by 28' equals 102.2 SF.

STAFF NOTE: The change shown on Attachment 2 (second floor addition) does not increase the original footprint of the nonconforming structure, but the change shown on Attachment 3 does increase the original footprint and is not allowed under §1-19-4.220(C)(1).

(2) Extend farther into the required setback(s) than the existing nonconforming portion(s) of the nonconforming structure;

The Applicant states that the proposed changes:

(a) Will not extend farther into the required setback(s) than the existing nonconforming portion(s) of the nonconforming structure.

(b) The proposed work will only go up on the existing structure in the non-conforming space.

STAFF NOTE: The change shown on Attachment 2 (second floor addition) does not extend farther into the required setbacks than the existing nonconforming structure, but the change shown on Attachment 3 does extend farther into the required setbacks and is not allowed under §1-19-4.220(C)(2).

(3) Include the construction of a nonconforming porch, enclosure of an existing nonconforming porch, or the addition of stories on top of a nonconforming porch.

The Applicant states:

(a) Please see attachment 3. We would like to connect a side deck to the existing front porch. In so doing we would create a portion that would be built as to not extend farther forward than the existing porch within the non-conforming area, but add width that is against the side that is not in question as far as eastern setback.

(b) The existing porch has a CMU block foundation with Concrete deck. The proposed deck area would be on treated posts and built as a deck so as to not have the ability to be used as enclosed living space or expand upward.

(c) The space in question would equate to approximately 56 SF.

(See Attachment 3)

STAFF NOTE: The change shown on Attachment 3 does not meet the requirements of §1-19-4.220(C)(3) because it proposes construction of a nonconforming porch/deck area. While the existing porch on the front of the house will not extend any farther into the setback, the proposed connection of the new porch/deck to the existing porch will create an additional porch/deck area that violates the setback requirements. See Attachment 3.

(G) A decision of the Board of Appeals granting a variance will be void 2 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

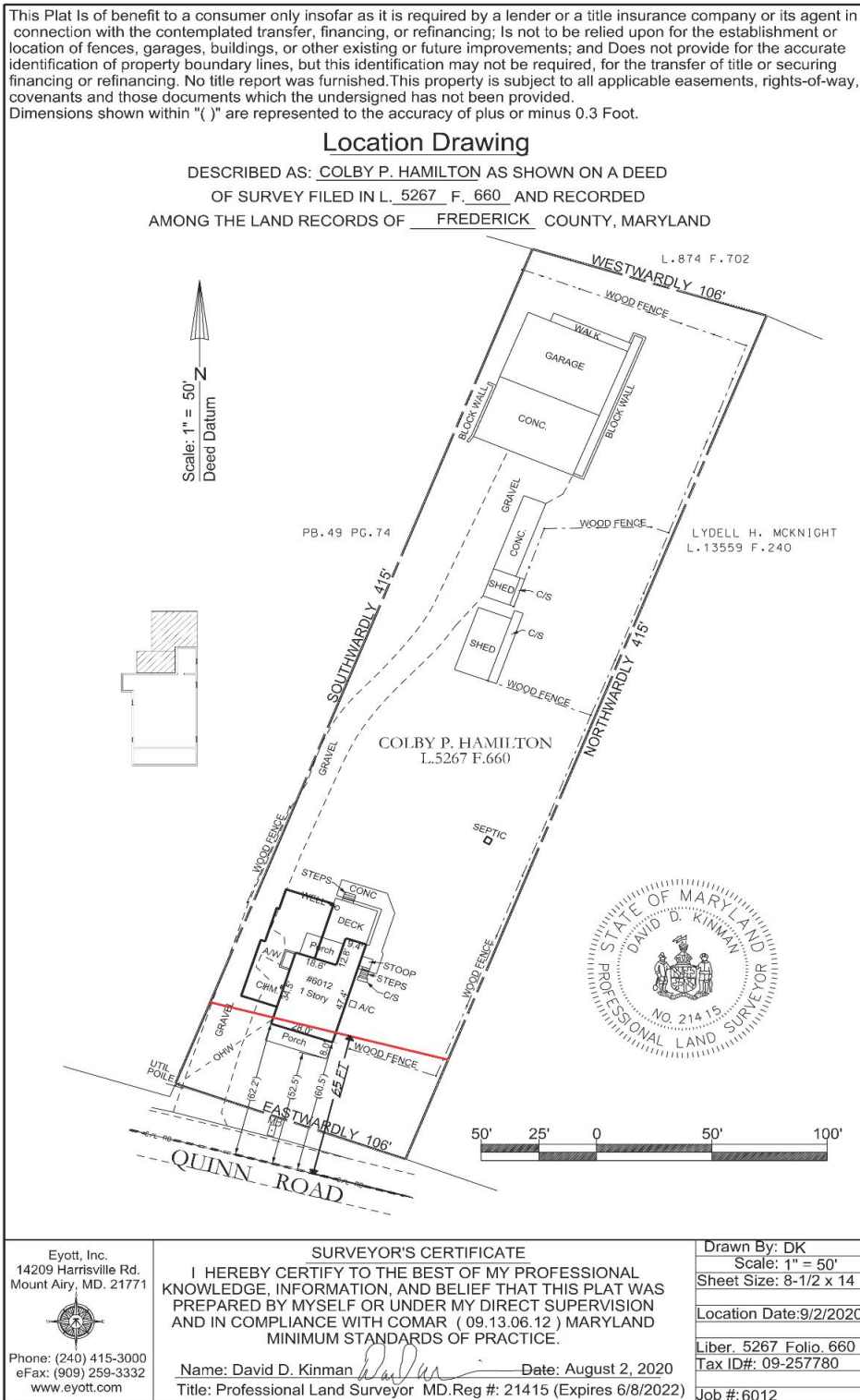
The Applicant states that he understands this requirement.

Actions Needed:

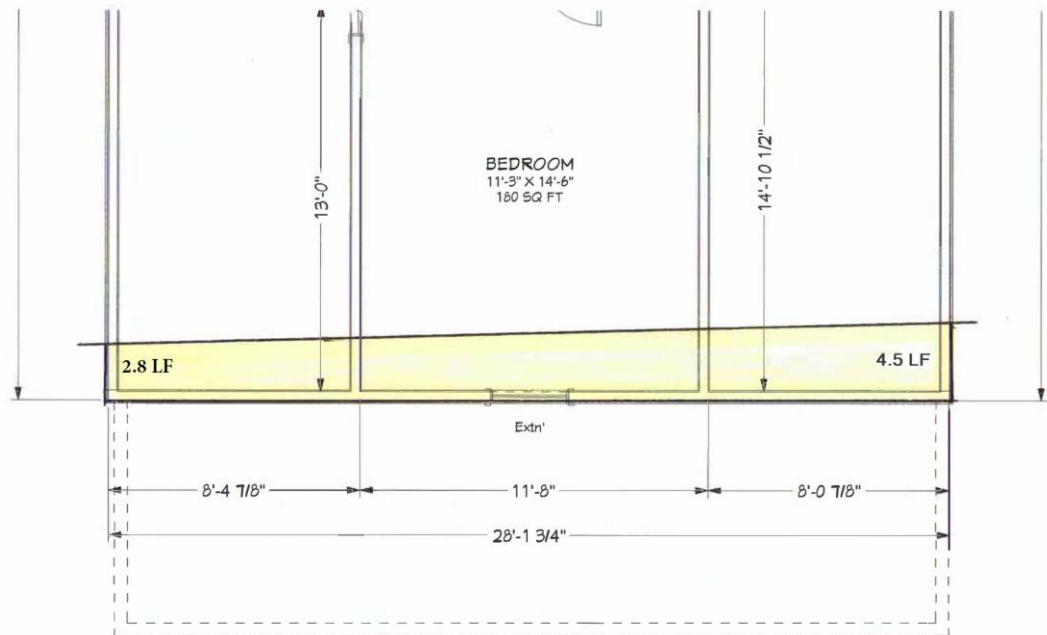
Staff requests that the Board review the general criteria for a variance under Section 1-19-3.220 Variances, Section 1-19-6.100 Design Requirements, and Section 1-19-4.220(C) render a decision on the Applicant's request

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Attachment 1: *(Please note the red line shown below marks the required right of way and front yard setback. The area to the North of the red line indicates the conforming portion of the structure and property. The area to the South of the red line indicates the non-conforming portion of the structure and property.)

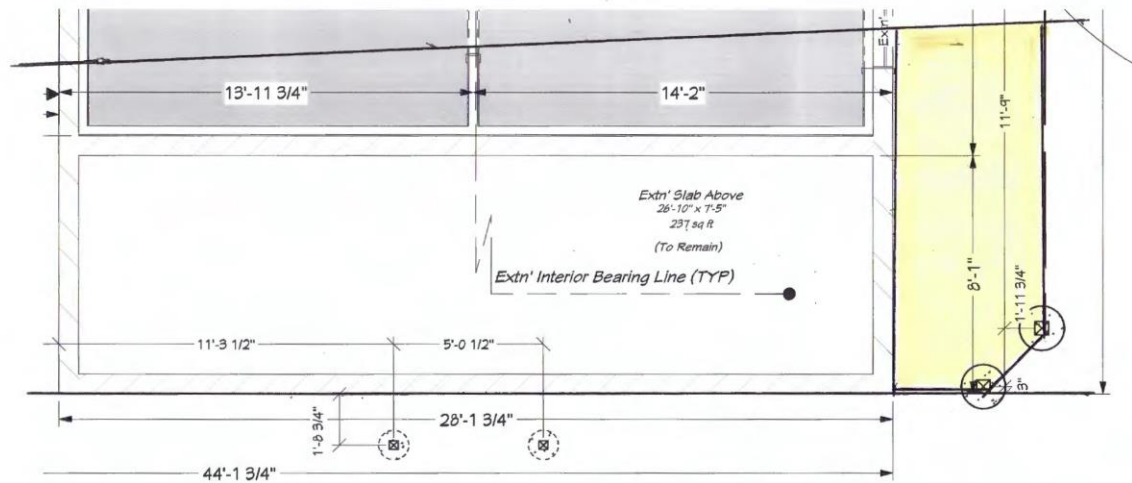


Attachment 2



1 | EXTN' PLAN: Extn' Second Floor

Attachment 3



GIS Maps

